the carrier rates disproportionately high, he commits a crime by paying the only lawful rate. Apparently he must stop shipping until he can get the carrier to charge him more or his competitor less. Even this solicitation for his rival's welfare may not keep him out of crime, for the Interstate Commerce Commission or a jury may easily differ from him on the reasonableness of the new rates, or even declare the original proportion reasonable. The obvious objection to the court's position is well framed by Mr. Justice Brewer: "In order to constitute a crime, the act must be such that the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable." [10] For this reason it would seem necessary to say that the penal section of the statute applies only to discriminations between persons, and not between localities. The aggrieved parties should have used the procedure afforded by the statute to have the proportion made reasonable. Neither set of the indictments alleges all the essentials to constitute what the statute makes the crime, — the acceptance, for a similar service, of a concession from the published and filed rate.

THE LAW GOVERNING THE RECORDING OF AN ASSIGNMENT OF A CHOSE IN ACTION. — There are various views as to what law governs the voluntary assignment of a chose in action.[1] The most prominent two favor respectively the law of the domicile of the creditor and the law of the place of assignment. The cases on the subject are singularly inconclusive. Their language sometimes supports the first view entirely,[2] sometimes the second,[3] or even couples the two as if they were equivalent; [4] but actual decisions, where domicile and place of assignment have not coincided, have not been found. Between the two views, choice must be made according as an assignment is considered a transfer of property or a power of attorney to enforce the chose in action. A transfer of property is governed by the law of its situs.[5] A chose in action, however, being incorporeal, has of course no real situs; yet, relying on the often-quoted maxim that *mobilia personam sequuntur*, courts have said that the assignment should be governed by the law of the creditor's domicile. But an assignment of a chose in action is preferably not to be regarded as a transfer of property. A chose in action is a personal matter; its very essence is the mutual assent of two parties; and there is difficulty in seeing how a new person can be injected into the agreement by one party without the consent of the other. However, the assignor can give his assignee a power of attorney to collect, and contract to allow him to use it; and that this is the nature of an assignment seems substantiated by the history of the law.[6] The existence of this power should be determined wholly by the law of the place where it is given, for

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[10] Tozer *v.* United States, 52 Fed. Rep. 917.

[1] Law of place of performance, see Abt *v.* American, etc., Bk., 159 Ill. 467; law of domicile of debtor, see *In re* Queensland, etc., Co., [1891] 1 Ch. 536. See also Dicey, Conf. of Laws, 533.

[2] Davis *v.* Mills, 99 Fed. Rep. 39; Howard Nat'l Bk. *v.* King, 10 Abb. N. C. (N. Y.) 346. See Story, Conf. of Laws, § 397; 4 Cyc. 63.

[3] Black *v.* Zacharie, 3 How. (U. S.) 483; McClintick *v.* Cummins, 3 McLean (U. S.) 158. See 22 Am. & Eng. Encyc. 1343.

[4] Allen *v.* Bain, 2 Head (Tenn.) 100; Smith *v.* Chicago, etc., Ry., 23 Wis. 267.

[5] Cammell *v.* Sewell, 5 H. & N. 728; Marvin Safe Co. *v.* Norton, 48 N. J. L. 410.

[6] Watson *v.* Bagaley, 12 Pa. St. 164. See 3 HARV. L. REV. 340, 341.

the parties, acting in the jurisdiction of that law, can acquire from their actions only such rights as that law gives.[7]

In a recent federal decision a creditor, domiciled in Michigan, made an assignment in Connecticut of all his future book accounts and bills receivable. By Connecticut law an assignment of future earnings is not valid against creditors unless recorded; by Michigan law no recording is necessary. In a petition by the Connecticut assignee, filed in Michigan bankruptcy proceedings against the assignor, it was held that the assignment was valid against creditors though not recorded. *Union Trust Co.* v. *Bulkeley*, 150 Fed. Rep. 510 (C. C. A., Sixth Circ.). The case raises both the foregoing and an additional problem. Whether there was any assignment should be determined by the law of Connecticut. If the statute of Connecticut[8] were properly to be construed as making the power of attorney defeasible, as by condition subsequent, on failure to record before the attaching claims of other creditors, Michigan would have to acknowledge here that the petitioner had no valid claim.[9] But such a statute is best to be treated as applying only to proceedings before the court of the state which enacted it. It pertains to the order in which a court will distribute a fund in its possession, or the proceeds of a claim against a debtor over whom it has jurisdiction. This is matter of procedure, and is governed, as the case properly says, by the law of the forum.[10] The question is in the first instance a construction of the Connecticut statute. But acknowledging that there was a valid assignment, the necessity of recording it would depend on the law of Michigan.

RIGHTS OF THE OWNER OF AN IDLE PATENT IN EQUITY. — The patent law of the United States is the direct outgrowth of the old English system of royal grants of exclusive rights to carry on a particular trade or manufacture. These monopolies, which were given sometimes to raise revenue but often to reward favorites, became so burdensome upon the people that in the reign of James I all were abolished by statute except letters patent to inventors.[1] The reason for this exception is evident. Unlike the owner of other monopolies, the patentee was regarded as giving something to the public in return for the favor which he received.[2] This reason explains why at the present time in the United States, when the drift of judicial decision and of legislation is against monopoly, there is a disposition on the part of the courts to treat the patentee leniently. His right of legal monopoly is regarded in the nature of a contract right, given him and his assigns by statute in consideration of the benefit conferred upon the public.[3] Therefore, though the law apparently gives the owner of a patent the right to do as he pleases with it, and recognizes in that right a species of property, so

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[7] *Cf.* Blackwell *v.* Webster, 23 Blatchf. (U. S.) 537; Carnegie *v.* Morrison, 2 Met. (Mass.) 381.

[8] Laws of Conn., 1905, c. 78.

[9] *Cf.* Vanbuskirk *v.* Hartford, etc., Co., 14 Conn. 582. *Contra*, Martin *v.* Potter, 34 Vt. 87.

[10] *Cf.* Kelly *v.* Selwyn, [1905] 2 Ch. 117.

[1] 21 Jac. 1, c. 3.

[2] See Cartwright *v.* Arnott, cited in Harmer *v.* Playne, 11 East 107; Grant *v.* Raymond, 6 Pet. (U. S.) 218, 242; Magic Ruffle Co. *v.* Douglas, 2 Fish. Pat. Cas. 330, 333.

[3] See Attorney-General *v.* Rumford Chemical Works, 32 Fed. Rep. 608, 617; Nat'l Hollow B. B. Co. *v.* Interchangeable B. B. Co., 106 Fed. Rep. 693, 701.